

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

FILED  
U.S. DISTRICT COURT  
BRUNSWICK DIV.  
2013 MAR -1 P 4:11  
CLERK C. Robinson  
SO. DIST. OF GA.

SCOTT HINTZ,

Petitioner,

vs.

CIVIL ACTION NO.: CV212-176

ANTHONY HAYNES, Warden,

Respondent.

**ORDER**

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. Respondent filed a Response to these Objections. In his Objections, Petitioner Scott Hintz ("Hintz") states that he conditionally accepts the Magistrate Judge's Report "based upon the undisputed affidavit facts and objects of actual innocence now accepted, agreed[,] and understood to be true and sufficient evidence and proof of actual innocence." (Doc. No. 21, p. 2). Hintz asserts that the Magistrate Judge's Report is based on "newly discovered" evidence which was not discoverable because this evidence was purposely hidden from him. Hintz also requests that this Court transfer his case to the appropriate court for disposition pursuant to 28 U.S.C. § 2255(h).

Section 2255 (h) provides:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

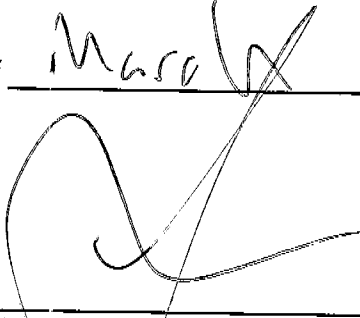
(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). Section 2255(h) provides an actual innocence exception to bringing a second or successive § 2255 motion. This statute does not relate in any way to a prisoner's ability to bring a 28 U.S.C. § 2241 petition. See Gilbert v. United States, 640 F.3d 1293, 1318 (11th Cir. 2011). Accordingly, Hintz cannot bring his actual innocence claim via section 2241. If Hintz wishes to pursue this claim, he can do so by filing with the appropriate court. This Court will not transfer this section 2241 petition.

Hintz's Objections are **overruled**. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Respondent's Motion to Dismiss is **GRANTED**. Hintz's petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241, is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 1 day of March, 2013.

  
LISA GODBEY WOOD, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA